IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/11/2003

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

C.M.S.A.No.26 of 2002

N.Krishnan .. Appellant

-Vs-

1. M/s.Orange Valley Tea Industry
rep. by its Managing Partner
V.Ganesan, S/o.T.Venkatasamy Chettiar
R.C.Church Road, Kotagiri.

2. S.K.Raman .. Respondents

PRAYER: Against the judgment and decree dated 2.7.2001 made in A.S. No.7 of 2001 on the file of the District Judge, Nilgiris, at Uthagamandalam, reversing the judgment and decree dated 3.1.2001 made in E.A. No.134 of 1999 in E.P.No.32 of 1998 in O.S.No.49 of 1996 on the file of the Sub-Judge, Uthagamandalam.

!For Appellant : Mr.R.Balakrishnan

^For Respondents: Mr.B.Soundarapandian
for R1
NO appearance for R2

:JUDGMENT

The above appeal is directed against the order dated 2.7.2001 made in A.S.No.7 of 2001 on the file of the District Judge, Nilgiris, at Uthagamandalam upholding the claim of the first respondent and reversing the judgment and decree dated 3.1.2001 made in E.A.No.134 of 1999 in E.P.No.32 of 1998 in O.S.No.49 of 1996 on the file of the SubJudge, Uthagamandalam wherein the properties of the first respondent-firm/third party/claimant were attached in lieu of the liability of the second respondent/judgment-debtor/defendant in the suit O.S.No.49 of 19 96.

2.1. Admittedly, the appellant/decree-holder/plaintiff obtained a decree against the second respondent/judgment-debtor/defendant in O.S. No.49 of 1996, who was a partner in the first respondent-firm, under a partnership by contract during the period 1.11.1989 to 22.6.1996.

2.2. Even though the Execution Court dismissed the claim of the first respondent/third party/claimant and refused to raise the attachment by an order dated 3.1.2001 made in E.A.No.134 of 1999 in E.P.No.32 of 1998 in O.S.No.49 of 1996, on appeal the learned District Judge, Nilgiris by judgment and decree dated 2.7.2001 made in A.S.No.7 of 200 1 upheld the claim of the first respondent-firm, taking note of the fact that the second respondent/judgment-debtor/defendant ceased to be a partner of the first respondent-firm with effect from 22.6.1996, whereas the properties of the first respondent-firm/third party/ claimant were attached only on 12.7.1996. Hence, this civil miscellaneous second appeal.

3. Mr.R.Balakrishnan, learned counsel for the appellant/decreeholder/plaintiff challenges the judgment and decree dated 2.7.2001 made in A.S.No.7 of 2001 on the file of the District Judge, Nilgiris, at Uthagamandalam, on the following substantial questions of law:-

(i) Whether the lower Appellate Court is correct in holding that the present claim petition is not barred under Section 11 of C.P.C., when, the matter directly and substantially in issue, in this claim petition had been directly and substantially in issue in the former proceedings in I.A.No.391 of 1996?

(ii) Whether the lower Appellate Court is correct in allowing the appeal on the ground that the second respondent/judgment-debtor had retired from partnership on 22.6.1996 and attachment was effected on 12.7 .1996 when no public notice was given as contemplated under Section 7 2 of Indian Partnership Act, 1932 to bind the third party, viz., the plaintiff/appellant herein?

4.1. Question:1 - Whether the lower Appellate Court is correct in holding that the present claim petition is not barred under Section 11 of C.P.C., when, the matter directly and substantially in issue, in this claim petition had been directly and substantially in issue in the former proceedings in I.A.No.391 of 1996?

4.2. Concededly, when the order of attachment was made on 12.7.1996 , the first respondent-firm was not at all a party to the suit. Therefore, the contention that the first respondent/third party/claimant failed to make an objection to the order of attachment dated 12.7.199 6 is not tenable in law, as the failure by the first respondent/ third party/claimant to object the order of attachment shall not amount to res judicata.

4.3. In that view, the first substantial question of law is answered against the appellant.

5.1. Question:2 - Whether the lower Appellate Court is correct in allowing the appeal on the ground that the second respondent/judgment debtor had retired from partnership on 22.6.1996 and attachment was effected on 12.7.1996 when no public notice was given as contemplated under Section 72 of Indian Partnership Act, 1932 to bind the third party, viz., the plaintiff/appellant herein?

5.2. I am inclined to refer the relevancy of the public notice contemplated under Section 72 of the Indian Partnership Act, 1932 (for brevity "the Act"). Section 72 of the Act reads as follows:

"Section:72 - Mode of giving public notice:- A public notice under this act is given:
(a) where it relates to the retirement or expulsion of a partner from a registered firm, or to the dissolution of a registered firm, or to the election to become or not to become a partner in a registered firm by a person attaining majority who was admitted as a minor to the benefits of partnership, by notice to the Registrar of Firms under Section 63, and by publication in the Official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business, and
(b) in any other case, by publication in the Official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business."

5.3. A reading of the above section makes it clear that a retiring partner would continue to be liable for any subsequent act on behalf of the firm which would bind the firm until the public notice as prescribed under Section 72 of the Act is given. In other words, if the retiring partner who has not given notice in the mode specified under Section 72 of the Acts wants to escape liability for any subsequent acts on behalf of the firm, it can only be on the basis of some other rule of law and not on the ground that public notice was given in a manner different from that prescribed by Section 72 of the Act. The rule that makes a retiring partner liable for acts done on behalf of the firm after retirements is one based on estoppel, because the persons dealing with it in that behalf think that all the partners of the firm still continue. But, in the instant case, the transaction between the appellant/decree-holder/ plaintiff and the second respondent/ judgment-debtor/ defendant is totally independent of the transactions of the first respondent-firm and therefore, there is no scope for the application of the rule of estoppel to make the retiring partner liable for the subsequent act on behalf of the firm.

5.5. If that be so, the argument advanced in this regard by Mr.R. Balakrishnan, learned counsel for the appellant that the retirement of the second respondent/ judgment-debtor/defendant with effect from 22.6.1996 is a nullity for want of public notice contemplated under Section 72 of the Act and that the consequential order of attachment has to be given effect to, is not tenable in law.

5.6. The second substantial question of law is answered in negative.

6. Resultantly, I am of the firm opinion that there is no error or illegality in the judgment and decree dated 2.7.2001 made in A.S.No.7 of 2001 of the lower Appellate Court upholding the claim of the first respondent-firm and raising the attachment dated 12.7.1996, attaching their properties. The appeal fails and the same is dismissed. No costs. Consequently, C.M.P.No.12104 of 2002 is also dismissed.

Index: Yes
Internet:Yes

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To:

1. The District Judge, Nilgiris,
at Uthagamandalam

2. The Sub-Judge, Uthagamandalam.